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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

COMMISSIONERS

DOCKETED

APR 28 2010

KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

DOCKETED BY

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In the matter of:

RADICAL BUNNY, L.L.C., an Arizona
limited liability company,HORIZON PARTNERS, L.L.C., an Arizona
limited liability company,TOM HIRSCH (aka THOMAS N.
HIRSCH) and DIANE ROSE HIRSCH,
husband and wife,BERTA FRIEDMAN. WALDER (aka
BUNNY WALDER), a married person,HOWARD EVAN WALDER, a married
person,HARISH PANNALAL SHAH and
MADHAVI H. SHAH, husband and wife,

Respondents.

DOCKET NO. S-20660A-09-0107

DECISION NO. 71682**ORDER TO CEASE AND DESIST, ORDER
FOR RESTITUTION AND CONSENT TO
SAME****BY: RADICAL BUNNY, L.L.C., an Arizona
limited liability company**

Respondent RADICAL BUNNY, L.L.C., an Arizona limited liability company ("Respondent") elects to permanently waive any right to a hearing and appeal under Articles 11 and 12 of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act") with respect to this Order To Cease And Desist, Order for Restitution and Consent to Same ("Order"). Respondent admits the jurisdiction of the Arizona Corporation Commission ("Commission"); neither admits nor denies the Findings of Fact and Conclusions of Law contained in this Order; and consents to the entry of this Order by the Commission.

I.

FINDINGS OF FACT

1. RADICAL BUNNY, L.L.C. ("Respondent") is an Arizona limited liability company organized on June 24, 1999. Since its inception, Respondent conducted business from its sole business office located in Phoenix, Arizona.

2. On October 8, 2008 an involuntary petition for relief was filed against Respondent under title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Arizona (Phoenix) (the "Court"), under case no. 2:08-bk-13884-CGC (the "RB Bankruptcy"). On October 20, 2008, the Court entered an order converting the case to a voluntary petition under Chapter 11 of the Bankruptcy Code. On December 29, 2008, an order was entered appointing G. Grant Lyon as the Chapter 11 Trustee in the RB Bankruptcy. The RB Bankruptcy is pending.

3. Pursuant to the records of the Arizona Corporation Commission, Corporations Division, Tom Hirsch has been the manager of Respondent since June 24, 1999.¹

4. HORIZON PARTNERS, L.L.C. ("Horizon Partners") is an Arizona limited liability company organized on August 19, 1997. Since its inception, Horizon Partners has conducted business from its sole business office located in Phoenix, Arizona.

5. Pursuant to the records of the Arizona Corporation Commission, Corporations Division, Tom Hirsch has been the manager of Horizon Partners since August 19, 1997.

6. TOM HIRSCH (aka THOMAS N. HIRSCH) ("Hirsch") is a married person who, at all times relevant hereto, resided in Maricopa County, Arizona and conducted business as the manager on behalf of Horizon Partners and Respondent from Arizona.

7. BERTA FRIEDMAN WALDER (aka BUNNY WALDER) ("B. Walder") is a married person who, at all times relevant hereto, resided in Maricopa County, Arizona and

¹ Hirsch has not acted in the capacity as manager of Respondent since the appointment of the Chapter 11 Trustee in the RB Bankruptcy.

1 conducted business as a manger on behalf of Respondent from Arizona.

2 8. HOWARD EVAN WALDER ("H. Walder") is a married person who, at all times
3 relevant hereto, resided in Maricopa County, Arizona and conducted business as a manger on behalf
4 of Respondent from Arizona.

5 9. HARISH PANNALAL SHAH ("Shah") is a married person who, at all times
6 relevant hereto, resided in Maricopa County, Arizona and conducted business as a manger on behalf
7 of Respondent from Arizona.

8 10. Mortgages Ltd. ("MLtd") was incorporated on April 1, 1964 and is an Arizona
9 licensed mortgage banker.² It has operated as a private mortgage lender for residential property
10 since its inception and in connection with commercial real estate since the late 1980s. Scott M.
11 Coles ("Coles") acted as the CEO/Chairman of MLtd from 1997 until his death on June 2, 2008.
12 The sole shareholder of MLtd is the SMC Revocable Trust U/T/A dated December 22, 1994, as
13 amended ("SMC Trust").

14 11. MLtd originates, invests in, sells and services its own short-term real estate loans.
15 MLtd's loans range from \$1 million to \$150 million, with an average term of 6 to 18 months, carry
16 higher interest rates than traditional institutional lenders, and often are used as bridge financing.
17 All of MLtd's loans are secured by real estate, including multifamily residential projects, office
18 buildings, and mixed-use projects within Arizona.

19 12. As of June 23, 2008, MLtd had outstanding loans of approximately \$894 million in
20 approximately sixty-six (66) real estate projects ("MLtd Loan" or "MLtd Loans").

21 13. The MLtd Loans are funded from the sale of the secured promissory notes to
22 investors. The secured promissory notes are sold to investors through Mortgages Ltd. Securities,

23
24 ²The Arizona Department of Financial Institutions filed Notice of Hearing to Revoke the mortgage banker's license of
25 Mortgages Ltd. with the Office of Administrative Hearings as matter no. 09F-BD058-BNK on February 27, 2009. On
26 July 27, 2009, ML Servicing Co., an entity created pursuant to the Confirmation Order of the United States Bankruptcy
Court for the District of Arizona to act as the reorganized entity for Mortgages Ltd. in case no. 2:08-bk-07465-RJH,
consented to the entry of the revocation of the Mortgage Banker License Number BK-0007577 issued in the name of
Mortgages Ltd. which consent order was approved and entered on July 28, 2009.

1 L.L.C. ("MLS"), a wholly owned subsidiary of MLtd. MLtd also uses its own funds for loans that
2 it originates.

3 14. MLS, an Arizona limited liability company, was organized on February 1, 2001 and
4 was registered as a securities dealer with the Commission on March 9, 2004. On December 31,
5 2008, MLS terminated its registration with the Commission.

6 15. A portion of the MLtd Loans are made directly on behalf of itself and investors,
7 where MLtd and its investors receive direct, "pass through" fractional loan and lien interests in real
8 estate collateral (the "Pass Through Participation"). Each investor in the Pass Through
9 Participation program individually acquires a participation interest in the loan or loans selected and
10 signs an agency agreement with MLtd, which appoints MLtd as the investor's agent. The investor
11 is assigned (i.e., endorsed) an interest in the promissory note evidencing the MLtd Loan, and a
12 corresponding assignment of beneficial interest in the real estate collateral (i.e., first lien position
13 deed of trust) is recorded.

14 16. Respondent was formed for the purpose of investing in the MLtd Pass Through
15 Participation program through the use of pooled investor funds.

16 17. Investors learned of the Respondent's investment opportunities from their
17 accountant, Hirsch and/or Shah, or by "word of mouth" from existing investors or their friends
18 and/or family. Investors reside in Arizona and at least twenty-three other states and four foreign
19 countries.

20 18. Respondent is not, and has never been, registered as securities dealer with the
21 Commission.

22 ***Horizon Partners: January 1998 through 2005***

23 19. From January 1998 until the fall of 2005, Horizon Partners invested in the MLtd
24 Pass Through Participation program. All endorsements of the secured promissory notes and
25 corresponding assignments of the beneficial interests in the deeds of trust were issued in the name
26 of Horizon Partners and duly recorded.

20. From at least January 1998 through the fall of 2005, Horizon Partners and Hirsch raised between \$25 and \$35 million from approximately 100 investors ("HP Participants") through the sale of limited liability company membership interests in Horizon Partners in order to participate in the MLtd Pass Through Participation program.

21. Until late 2005, Horizon Partners "invested" all or a part of the HP Participant's capital account into a specific loan pursuant to the investor's instruction or "Direction to Purchase" executed by the investor and Hirsch on behalf of Horizon Partners. The Direction to Purchase authorized Hirsch, as the "purchaser's agent," to acquire an interest in a specific MLtd Loan. The Direction to Purchase also set forth the amount invested, the percent interest in the MLtd Loan that was represented by the HP Participant's investment, the annual "net"³ interest rate to be paid to the HP Participant, the maturity date of the MLtd Loan, and the interest payment due date.

22. Until late 2005, as the MLtd Loans matured or were repaid, the HP Participants were given the following options: (a) receive a complete distribution of their principal amounts invested in the MLtd Loan; (b) "roll-over" all of their principal amounts invested in the MLtd Loan for participation in another MLtd Loan; (c) "roll-over" a portion of their principal amounts invested in the MLtd Loan for participation in another MLtd Loan and receive a distribution of their remaining principal amounts; or (d) "roll-over" all of their principal amounts invested in the MLtd Loan along with additional funds for participation in another MLtd Loan.

23. Until late 2005, Horizon Partners and/or Hirsch made all investments in the MLtd Pass Through Participation program on behalf of the HP Participants, made all distributions of interest and/or principal to HP Participants, prepared and maintained all investment documents for each of the HP Participants, sent out quarterly account statements for each of the HP Participants, reviewed the loan summary sheets for each of the MLtd Loans in which Horizon Partners invested and provided them to potential and existing HP Participants for review, and issued an IRS Form

³ "Net" represented the difference between the stated annual interest rate being paid to Horizon Partners under the terms of the MLtd Loan and the reduced annual interest rate being paid by Horizon Partners to the HP Participants.

1 1065 ("K-1") to the HP Participants at the conclusion of each tax year. The HP Participants
2 completed "Application" forms and provided funds for and received distributions of principal and
3 interest from their investments pursuant to Direction to Purchases and/or "Instructions for Maturing
4 Funds."

5 24. As of December 2005, the minimum investment for each HP Participant in Horizon
6 Partners was \$25,000.

7 *Radical Bunny: June 1999 through 2005*

8 25. Respondent began investing in the MLtd Pass Through Participation program
9 beginning in June 1999 and continued to do so until approximately December 2005. All
10 endorsements of the secured promissory notes and corresponding assignments of the beneficial
11 interest in the deeds of trust were issued in the name of Respondent and duly recorded.

12 26. From at least January 1, 2000 through approximately December 2005, Respondent
13 raised at least \$40 million from investors ("RB Participants") through the sale of limited liability
14 company membership interests in Respondent in order to participate in the MLtd Pass Through
15 Participation program.

16 27. Respondent did not register the offer and sale of the limited liability company
17 interests with the Commission.

18 28. Until late 2005, Hirsch, B. Walder and Shah represented to investors that
19 Respondent would then "invest" all or a part of the RB Participant's capital account into a specific
20 loan pursuant to the investor's instruction or "Direction to Purchase" executed by the investor and
21 Hirsch and/or a "managing member" on behalf of Respondent. The Direction to Purchase
22 authorized Hirsch and/or a "managing member," as the "purchaser's agent," to acquire an interest
23 in a specific MLtd Loan. The Direction to Purchase also set forth the amount invested, the percent
24 interest in the MLtd Loan that was represented by the RB Participant's investment, the annual
25
26

1 "net"⁴ interest rate to be paid to the RB Participant, the maturity date of the MLtd Loan, and the
2 interest payment due date.

3 29. Until late 2005, as the MLtd Loans matured or were repaid, the RB Participants
4 were given the following options: (a) receive a complete distribution of their principal amounts
5 invested in the MLtd Loan; (b) "roll-over" all of their principal amounts invested in the MLtd Loan
6 for participation in another MLtd Loan; (c) "roll-over" a portion of their principal amounts invested
7 in the MLtd Loan for participation in another MLtd Loan and receive a distribution of the
8 remaining principal amounts; or (d) "roll-over" all of their principal amounts invested in the MLtd
9 Loan along with additional funds for participation in another MLtd Loan.

10 30. Beginning at a time when the number of RB Participants had substantially increased
11 and continuing until late 2005, Respondent imposed upon the RB Participants a *management fee* of
12 one-quarter of one percent from the stated annual interest percentage rate paid to Respondent under
13 the terms of the MLtd Loan. The management fee was assessed as interest payments on each of
14 the MLtd Loans were made by MLtd, as the servicing agent, to Respondent.

15 31. Until late 2005, Respondent and/or Hirsch made all investments in the MLtd Pass
16 Through Participation program on behalf of the RB Participants, made all distributions of interest
17 and/or principal to RB Participants, prepared and maintained all investment documents for each of
18 the RB Participants, sent out quarterly account statements for each of the RB Participants, reviewed
19 the loan summary sheets for each of the MLtd Loans in which Respondent invested and provided
20 them to potential and existing RB Participants for review, and issued an IRS Form 1065 ("K-1") to
21 the RB Participants at the conclusion of each tax year. The RB Participants completed
22 "Application" forms and provided funds for and received distributions of principal and interest
23 from their investments pursuant to Direction to Purchases and/or "Instructions for Maturing
24 Funds."

25 _____
26 ⁴ "Net" is defined as the difference between the stated annual interest rate being paid to Respondent under the terms of
the MLtd Loan and the reduced interest rate being paid by Respondent to the RB Participants.

32. As of December 2005, the minimum investment for each RB Participant in Respondent was \$50,000.⁵

Horizon Partners and Radical Bunny: Late 2005 through June 2, 2008

33. In late 2005, Respondent ceased investing in the MLtd Pass Through Participation program on behalf of the RB Participants, and instituted a new investment program in which Respondent would advance funds to MLtd to fund its loan programs to borrowers ("RB-MLtd Loan" or "RB-MLtd Loans").

34. Respondent did not register its new investment program with the Commission.

35. Under Respondent's new investment program, Horizon Partners would cease to operate effective December 31, 2005, and "any and all remaining investments" with Horizon Partners "would be rolled over" to Respondent's new investment program.

36. Effective December 1, 2005, as the MLtd Loans in which Horizon Partners or Respondent held a fractionalized interest under the MLtd Participation Pass Through program matured or were repaid, the HP Participants and/or RB Participants were given the following options: (a) receive a complete distribution of their principal amounts invested in the MLtd Loan; (b) "roll-over" all of their principal amounts invested in the MLtd Loan for participation in the Respondent's new investment program; (c) "roll-over" a portion of their principal amounts invested in the MLtd Loan for participation in Respondent's new investment program and receive a distribution of their remaining principal amounts; or (d) "roll-over" all of their principal amounts invested in the MLtd Loan and add additional funds for participation in the Respondent's new investment program.

37. Under Respondent's new investment program, investor ("Participant") funds were advanced to Respondent and held until a RB-MLtd Loan became available. Respondent would then pool the Participants' monies and fund the RB-MLtd Loan. The loan period ranged between

⁵ If a RB Participant had more than one investment account with RADICAL BUNNY (e.g., an individual account and an IRA account), then the total amount invested in all accounts had to total the minimum investment amount of \$50,000.

1 ninety days and eighteen months. Depending on the duration of the loan period, the stated interest
2 rate of the RB-MLtd Loan ranged between eleven and fourteen percent per annum. Interest was to
3 be paid to Respondent by MLtd on at least monthly basis. Participants would then receive their
4 interest payments from Respondent on a monthly basis.

5 38. The minimum amount for participation for each Participant in Respondent's new
6 investment program was \$50,000.⁶

7 39. Respondent imposed upon the Participants a management fee of two percent. The
8 two percent represented the difference between the stated annual interest rate being paid to
9 Respondent under the terms of the RB-MLtd Loan and the annual interest rate being paid by
10 Respondent to the Participants. The management fee was assessed as interest payments were made
11 by MLtd to Respondent.

12 40. From at least November 2006 until May 2008, Respondent conducted semiannual
13 meetings for its investors at the Orange Tree Resort in Scottsdale, Arizona ("Orange Tree
14 Meetings") which included a dinner/luncheon and Hirsch, B. Walder, and Shah presented a
15 slide/PowerPoint presentation. Hirsch, B. Walder, Shah, and H. Walder were also available to
16 answer questions from investors. These meetings were conducted over a three-day period in order
17 to accommodate all people who wanted to attend. Announcements were forwarded to the
18 Participants. Included with the invitation was a response card requesting that Respondent be
19 advised of how many people were going to attend. While the invitation stated that the purpose of
20 the meeting was not to solicit new investors, no steps were taken in order to ensure that potential
21 new investors did not attend.

22 41. Respondent, Hirsch, B. Walder, and Shah represented to investors that RADICAL
23 BUNNY would "invest" the Participant's funds "in MLtd," which investment would be evidenced
24 by a "secured" promissory note pursuant to the investor's instruction or "Direction to Purchase"

25 _____
26 ⁶ If a RB Participant had more than one investment account with Respondent (e.g., an individual account and an IRA account), then the total amount invested in all accounts had to total the minimum investment amount of \$50,000.

1 executed by the investor and a "managing member" on behalf of Respondent. The Direction to
2 Purchase authorized a "managing member," as the "purchaser's agent," to acquire an interest in a
3 specific RB-MLtd Loan as well as set forth the amount invested, the percent interest in the loan
4 that the investment amount represented, the annual "net"⁷ interest rate to be paid to the Participant,
5 the loan maturity date, and the interest due dates.

6 42. If a Participant desired to redeem his/her principal prior to the RB-MLtd Loan
7 maturity date, Respondent imposed a redemption fee of an additional two percent above the stated
8 "net" interest rate being paid to the Participant retroactive to the date of investment.

9 43. Sources of money used to honor Participant redemption requests included new
10 investor funds, assets of Respondent, and personal funds of the Hirsch, B. Walder, H. Walder,
11 and/or Shah.

12 44. The current outstanding principal advances are evidenced by ninety-nine separate
13 promissory notes executed by MLtd in favor of Respondent. As of July 18, 2008, Respondent was
14 owed the aggregate principal amount of \$197,232,758.05 by MLtd.

15 45. Since at least December 2005, Respondent made all distributions of interest and/or
16 principal to the Participants, prepared and maintained all investment documents for each of the
17 Participants, sent out quarterly account statements for each of the Participants, reviewed the loan
18 summary sheets and other loan documentation for each of the MLtd Loans for which RB-MLtd
19 Loan proceeds were to be used to fund, visited the real estate subject to the MLtd Loans, received
20 and reviewed audited and unaudited financial statements of MLtd, and issued an IRS Form 1099-
21 INT to the Participants at the conclusion of each tax year. The Participants completed various
22 application forms and provided funds for and received distributions of principal and interest from
23 their investments pursuant to Directions to Purchase and/or "Instructions for Maturing Funds."

24 46. As of December 31, 2006, none of the HP Participants held a membership interest in
25

26 ⁷ "Net" is defined as the difference between the stated annual interest rate being paid to Respondent under the terms of
the RB-MLtd Loan and that reduced interest rate amount being paid by Respondent to the Participants.

1 Horizon Partners with the exception of Hirsch, B. Walder, and H. Walder.

2 47. As of December 31, 2006, none of the RB Participants held a membership interest
3 in Respondent with the exception of Hirsch, as Trustee of the Hirsch Family Trust, B. Walder, H.
4 Walder, Shah, and Modhavi Shah.

5 48. As of July 18, 2008, Respondent was owed the principal amount of \$3,748,000 from
6 *borrowers as a result of its investments in the MLtd Pass Through Participation program.*

7 49. Since at least January 2000, Respondent and Hirsch represented to offerees and
8 investors that he was a member and manager of Respondent. As a manager of Respondent, Hirsch
9 received a management fee for the performance of certain business activities of Respondent
10 including meeting with potential investors to discuss the investment program, serving as a contact
11 for existing investors, collecting investment checks from investors, attending and making
12 presentations at the Orange Tree investor meetings, participating in meetings with Respondent's
13 attorneys, acting as a signatory on Respondent's bank accounts, preparing income tax returns of
14 Respondent, preparing financial statements of Respondent and negotiating the RB-MLtd Loans
15 with Coles.

16 50. Since at least 2005, Respondent and Shah represented to offerees and investors that
17 he was a "managing member" of Respondent. As a "managing member" of Respondent, Shah
18 received a management fee for the performance of certain business activities of Respondent
19 including meeting with potential investors to discuss the investment program, serving as a contact
20 for existing investors, collecting investment checks from investors, attending and making
21 presentations at the Orange Tree investor meetings, participating in meetings with Respondent's
22 attorneys, acting as a signatory on Respondent's bank accounts, preparing income tax returns of
23 Respondent, and preparing financial statements of Respondent.

24 51. Since June 2005, Respondent and B. Walder represented to offerees and investors
25 that she was a "managing member" of Respondent. As a "managing member" of Respondent, B.
26 Walder received a management fee for the performance of certain business activities of Respondent

1 including meeting with potential investors to discuss the investment program, serving as the
2 primary contact with existing investors, collecting and depositing investment checks from
3 investors, setting up IRA accounts for investors to participate in Respondent's investment
4 opportunities, attending and making presentations at the Orange Tree investor meetings,
5 participating in meetings with Respondent's attorneys, participating in weekly meetings with MLtd
6 management, acting as a signatory on Respondent's bank accounts, and making distributions to
7 investors.

8 52. From September 2005, Respondent and H. Walder represented to offerees and
9 investors that he was a "managing member" of Respondent. As a "managing member" of
10 Respondent, H. Walder received a management fee for the performance of certain business
11 activities of Respondent including collecting and depositing investment checks from investors,
12 assisting in setting up IRA accounts for investors to participate in Respondent's investment
13 opportunities, attending the Orange Tree investor meetings, participating in meetings with
14 Respondent's attorneys, participating in weekly meetings with MLtd management, serving as a
15 signatory on Respondent's bank accounts, maintaining bank account records, preparing
16 distributions to investors, maintaining the IT system of Respondent, and serving as a contact for
17 MLtd for the funding of the RB-MLtd Loans.

18 53. In the fourth quarter of 2006, Respondent was advised by MLtd representatives that
19 Respondent may be engaged in the offer and sale of unregistered securities and that they should
20 seek legal advice regarding the conduct of the business activities of Respondent.

21 54. In late January 2007, Respondent was advised by an attorney whom one or more of
22 its managers interviewed, but did not ultimately retain on behalf of Respondent, that it "could not
23 legally operate Respondent without a license" because it was "engaged in a regulated activity" for
24 which a license is most likely required. This attorney did not render a legal opinion regarding
25 whether or not Respondent would be required to register as a securities dealer, obtain an
26 investment adviser or investment adviser representative license, and/or obtain a mortgage banker's

1 license in order to continue to conduct its business. However, the attorney cautioned Respondent
2 that it should be "concerned" because any complaint to securities or banking regulators and/or an
3 audit of MLtd "could expose [sic] it" to liability engaging in unregistered or unlicensed activities in
4 violation of state law.

5 55. In the first quarter 2007, Respondent was advised by its attorneys that it may be
6 engaged in the offer and sale of unregistered securities; however, Respondent continued to raise
7 funds from investors.

8 56. On or about May 2, 2007, Respondent was advised by its attorneys that it was, in
9 fact, engaged in the offer and sale of unregistered securities, and should stop raising funds under its
10 current investment program; however, they continued to raise funds from investors.

11 57. Between January 1, 2007 and April 30, 2008, Respondent raised at least an
12 additional \$73 million from investors.

13 58. From at least the last quarter of 2006, Respondent failed to advise offerees and
14 Participants that they had or were engaged in unregistered securities offerings in violation of the
15 Securities Act.

16 59. From at least December 2005, Respondent represented to offerees and Participants
17 that the Participants were investing "in MLtd notes and deeds of trust" when, in fact, the
18 Participants were investing in Respondent.

19 60. From at least December 2005, Respondent represented to offerees and Participants
20 that the RB-MLtd Loans were evidenced by "secured" promissory notes and/or collateralized by
21 [all of] the assets of MLtd and the personal guaranty of Coles. However, although form UCC-1s
22 were filed with the Arizona Secretary of State, at no time was there in existence a security
23 agreement executed by MLtd in favor of Respondent. In addition, the promissory notes evidencing
24 the RB-MLtd Loans did not refer to any form of collateral that secured the repayment of MLtd loan
25 obligation to Respondent.

26 61. In the first quarter of 2007, Respondent was advised by its attorneys that the

1 security interest in the collateral for the repayment of the RB-MLtd Loans was not, and had never
2 been, properly perfected. However, Respondent continued to represent to investors that the RB-
3 MLtd Loans were secured despite being advised by their attorneys to the contrary.

4 62. From at least December 2005, Respondent represented to investors that there were
5 four conditions precedent to funding the RB-MLtd Loans: (1) the real estate must be located in
6 Arizona; (2) the loan-to-value ratio must be at least 65 percent (3) the loan must be collateralized
7 by a deed of trust in first lien position; and (4) loans could not be to used construct single family
8 residences. "No exceptions."

9 63. From at least December 2005, Respondent failed to advise offerees and Participants
10 that promissory notes evidencing the RB-MLtd Loans did not contain any language that limited the
11 use of the RB-MLtd Loan proceeds to funding of MLtd Loans.

12 64. From at least December 2005, Respondent represented to offerees and Participants
13 that repayment of the RB-MLtd Loans was personally guaranteed by Coles. However, Respondent
14 never ascertained the nature and/or value of Coles' personal assets.

15 65. From January 1998 until June 2, 2008, Respondent and Horizon Partners raised
16 approximately \$300 million from investors.

17 66. As of November 10, 2008, at least \$189,800,867.00 is owed by Respondent to
18 approximately 900 investors.

19 II.

20 CONCLUSIONS OF LAW

21 1. The Commission has jurisdiction over this matter pursuant to Article XV of the
22 Arizona Constitution and the Securities Act.

23 2. Respondent offered or sold securities within or from Arizona, within the meaning of
24 A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

25 3. Respondent violated A.R.S. § 44-1841 by offering or selling securities that were
26 neither registered nor exempt from registration.

1 4. Respondent violated A.R.S. § 44-1842 by offering or selling securities while neither
2 registered as a dealer or salesman nor exempt from registration.

3 5. Respondent violated A.R.S. § 44-1991 by (a) employing a device, scheme, or
4 artifice to defraud, (b) making untrue statements or misleading omissions of material facts, or (c)
5 engaging in transactions, practices, or courses of business that operate or would operate as a fraud
6 or deceit. The conduct of Respondent includes, but is not limited to, the following:

7 a) From at least December 2005, Respondent represented to offerees and
8 Participants that the Participants were investing "in MLtd notes and deeds of trust" when, in fact,
9 the Participants were investing in Respondent;

10 b) From at least December 2005, Respondent represented to offerees and
11 Participants that the RB-MLtd Loans were evidenced by "secured" promissory notes and/or
12 collateralized by [all of] the assets of MLtd and the personal guaranty of Coles when, in fact, the
13 security interest was never properly perfected;

14 c) From at least December 2005, Respondent failed to inform offerees and
15 Participants that the nature and/or value of Coles' personal assets were never ascertained;

16 d) From at least December 2005, Respondent failed to advise offerees and
17 Participants that promissory notes evidencing the RB-MLtd Loans did not contain any language
18 that limited the use of the RB-MLtd Loan proceeds to funding of MLtd Loans; and

19 e) From at least the last quarter of 2006, Respondent failed to advise offerees
20 and Participants that it had been told by its attorneys that it had or were engaged in unregistered
21 securities offerings in violation of the Securities Act.

22 6. Respondent's conduct is grounds for a cease and desist order pursuant to A.R.S.
23 §44-2032.

24 7. Respondent's conduct is grounds for an order of restitution pursuant to A.R.S. § 44-
25 2032.
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III.**ORDER**

THEREFORE, on the basis of the Findings of Fact, Conclusions of Law, and Respondent's consent to the entry of this Order, attached and incorporated by reference, the Commission finds that the following relief is appropriate, in the public interest, and necessary for the protection of investors:

IT IS ORDERED, pursuant to A.R.S. § 44-2032, that Respondent, and any of Respondent's agents, employees, successors and assigns, permanently cease and desist from violating the Securities Act.

IT IS FURTHER ORDERED that Respondent complies with the attached Consent to Entry of Order.

IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that Respondent RADICAL BUNNY, L.L.C. shall, jointly and severally with any other Respondent against whom an order for restitution is rendered under Docket No. S-20660A-09-0107, pay restitution to the Commission in the principal amount of \$189,800,867.00. All principal and interest constitutes a "Securities Claim" under the plan of reorganization in the RB Bankruptcy and is to be treated strictly in accordance with the plan of reorganization confirmed in the RB Bankruptcy under 11. U.S.C. § 510(b). Any principal amount outstanding shall accrue interest at the rate of 10 percent per annum from the date of this Order until paid in full. Payment shall be made to the "State of Arizona" to be placed in an interest-bearing account controlled by the Commission.

The Commission shall disburse the funds on a pro-rata basis to investors shown on the records of the Commission. Any restitution funds that the Commission cannot disburse because an investor refuses to accept such payment, or any restitution funds that cannot be disbursed to an investor because the investor is deceased and the Commission cannot reasonably identify and locate the deceased investor's spouse or natural children surviving at the time of the distribution, shall be disbursed on a pro-rata basis to the remaining investors shown on the records of the

1 Commission. Any funds that the Commission determines it is unable to or cannot feasibly disburse
2 shall be transferred to the general fund of the state of Arizona.

3 For purposes of this Order, a bankruptcy filing by Respondent shall be an act of default,⁸
4 but not against any successor to Respondent resulting from the confirmation of a plan of
5 reorganization in the RB Bankruptcy. If Respondent does not comply with this Order, any
6 outstanding balance may be deemed in default and shall be immediately due and payable.

7 IT IS FURTHER ORDERED, that if Respondent fails to comply with this order, the
8 Commission may bring further legal proceedings against Respondent, including application to the
9 superior court for an order of contempt.

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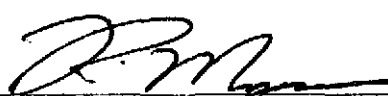
24 ...

25 ⁸ The RB Bankruptcy is pending and shall not constitute a default under this Order. Any subsequent bankruptcy
26 petition filed by Respondent or any successor-in-interest of Respondent following a discharge or dismissal of the RB
Bankruptcy proceeding shall constitute a default.

IT IS FURTHER ORDERED, that no finding of fact or conclusion of law contained in this Order shall be deemed binding against any Respondent under this Docket Number who has not consented to the entry of this Order.

IT IS FURTHER ORDERED that this Order shall become effective immediately.

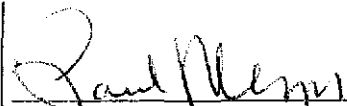
BY ORDER OF THE ARIZONA CORPORATION COMMISSION



CHAIRMAN



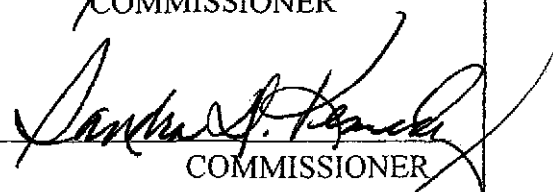
COMMISSIONER



COMMISSIONER

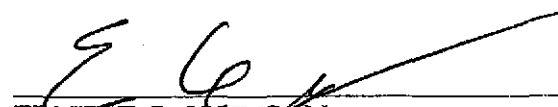


COMMISSIONER



COMMISSIONER

IN WITNESS WHEREOF, I, ERNEST G. JOHNSON, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 27th day of April, 2010.



ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

DISSENT

DISSENT

This document is available in alternative formats by contacting Shaylin A. Bernal, ADA Coordinator, voice phone number 602-542-3931, e-mail sabernal@azcc.gov.

(JC)

CONSENT TO ENTRY OF ORDER

1
2 1. Respondent RADICAL BUNNY, L.L.C. ("Respondent") admits the jurisdiction of
3 the Commission over the subject matter of this proceeding. Respondent acknowledges that
4 Respondent has been fully advised of Respondent's right to a hearing to present evidence and call
5 witnesses and Respondent knowingly and voluntarily waives any and all rights to a hearing before
6 the Commission and all other rights otherwise available under Article 11 of the Securities Act and
7 Title 14 of the Arizona Administrative Code. Respondent acknowledges that this Order to Cease
8 and Desist, Order for Restitution and Consent to Same by Radical Bunny, L.L.C., an Arizona
9 limited liability company, ("Order") constitutes a valid final order of the Commission.

10 2. Respondent knowingly and voluntarily waives any right under Article 12 of the
11 Securities Act to judicial review by any court by way of suit, appeal, or extraordinary relief
12 resulting from the entry of this Order.

13 3. Respondent acknowledges and agrees that this Order is entered into freely and
14 voluntarily and that no promise was made or coercion used to induce such entry.

15 4. Respondent acknowledges that Respondent, through its Chapter 11 Trustee, G.
16 Grant Lyon, has been represented by an attorney in this matter, Respondent has reviewed this Order
17 with Respondent's attorneys, Jordan A. Kroop and Thomas J. Salerno of the law firm Squire
18 Sanders & Dempsey, LLP, and understands all terms it contains.

19 5. Respondent neither admits nor denies the Findings of Fact and Conclusions of Law
20 contained in this Order. Respondent agrees that Respondent shall not contest the validity of the
21 Findings of Fact and Conclusions of Law contained in this Order in any present or future
22 proceeding in which the Commission or any other state agency is a party concerning the denial or
23 issuance of any license or registration required by the state to engage in the practice of any business
24 or profession.

25 6. By consenting to the entry of this Order, Respondent agrees not to take any action or
26 to make, or permit to be made, any public statement denying, directly or indirectly, any Finding of

1 Fact or Conclusion of Law in this Order or creating the impression that this Order is without factual
2 basis. Respondent will undertake steps necessary to assure that all of Respondent's agents and
3 employees understand and comply with this agreement.

4 7. While this Order settles this administrative matter between Respondent and the
5 Commission, Respondent understands that this Order does not preclude the Commission from
6 instituting other administrative or civil proceedings based on violations that are not addressed by
7 this Order.

8 8. Respondent understands that this Order does not preclude the Commission from
9 referring this matter to any governmental agency for administrative, civil, or criminal proceedings
10 that may be related to the matters addressed by this Order.

11 9. Respondent understands that this Order does not preclude any other agency or
12 officer of the state of Arizona or its subdivisions from instituting administrative, civil, or criminal
13 proceedings that may be related to matters addressed by this Order.

14 10. Respondent agrees that Respondent will not apply to the state of Arizona for
15 registration as a securities dealer or salesman or for licensure as an investment adviser or
16 investment adviser representative until such time as all restitution under this Order are paid in full.

17 11. Respondent agrees that Respondent will not exercise any control over any entity that
18 offers or sells securities or provides investment advisory services within or from Arizona until such
19 time as all restitution and penalties under this Order are paid in full.

20 12. Respondent agrees that Respondent will not sell any securities in or from Arizona
21 without being properly registered in Arizona as a dealer or salesman, or exempt from such
22 registration; Respondent will not sell any securities in or from Arizona unless the securities are
23 registered in Arizona or exempt from registration; and Respondent will not transact business in
24 Arizona as an investment adviser or an investment adviser representative unless properly licensed
25 in Arizona or exempt from licensure.

26 13. Respondent agrees that Respondent will continue to cooperate with the Securities

1 Division including, but not limited to, providing complete and accurate testimony at any hearing in
2 this matter and cooperating with the state of Arizona in any related investigation or any other
3 matters arising from the activities described in this Order.

4 14. Respondent consents to the entry of this Order and agrees to be fully bound by its
5 terms and conditions.

6 15. Respondent acknowledges and understands that if Respondent fails to comply with
7 the provisions of the order and this consent, the Commission may bring further legal proceedings
8 against Respondent, but not against any successor to Respondent resulting from the confirmation of
9 a plan of reorganization in the RB Bankruptcy, including application to the superior court for an
10 order of contempt.

11 16. Respondent understands that default shall render Respondent,⁹ but not against any
12 successor to Respondent resulting from the confirmation of a plan of reorganization in the RB
13 Bankruptcy, liable to the Commission for its costs of collection and interest at the maximum legal
14 rate.

15 17. Respondent agrees and understands that if Respondent fails to make any payment as
16 required in the Order, any outstanding balance shall be in default and shall be immediately due and
17 payable without notice or demand. Respondent agrees and understands that acceptance of any
18 partial or late payment by the Commission is not a waiver of default by the Commission.

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26 ⁹ The RB Bankruptcy is pending and shall not constitute a default under this Order. Any subsequent bankruptcy
petition filed by Respondent or any successor-in-interest of Respondent following a discharge or dismissal of the RB
Bankruptcy proceeding shall constitute a default.

1 18. G. Grant Lyon represents that he is the Chapter 11 Trustee appointed by the court
2 for Respondent in the matter entitled *In re Radical Bunny, L.L.C.* pending in the U.S. Bankruptcy
3 Court for the District of Arizona (Phoenix), case no. 2:08-bk-13884-CGC and is authorized to enter
4 into this Order for and on behalf of Respondent.

5
6 By:



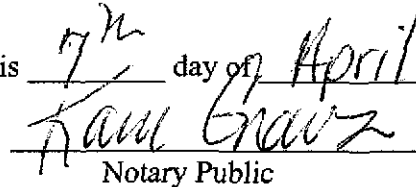
G. Grant Lyon

Chapter 11 Trustee of Radical Bunny, L.L.C.

8 STATE OF ARIZONA)
9) ss
10 County of *Maricopa*)

11 SUBSCRIBED AND SWORN TO BEFORE me this 17th day of April, 2010.

12 My Commission expires:
13 _____
14


Notary Public



KAREN GRAVES
Notary Public - Arizona
Maricopa County
Expires 07/22/2013

1 SERVICE LIST FOR: In the Matter of: Radical Bunny, L.L.C., an Arizona limited liability
2 company, Horizon Partners, L.L.C., an Arizona limited liability company, Tom Hirsch (aka
3 Thomas N. Hirsch) and Dian Rose Hirsch, husband and wife, Berta Friedman Walder (aka Bunny
4 Walder), a married person, Howard Evan Walder, a married person, Harish Pannalal Shah and
5 Madhavi H. Shah, husband and wife

6 Docket Control
7 Arizona Corporation Commission
8 1200 West Washington
9 Phoenix, AZ 85007

10 Jordan A. Kroop
11 Thomas J. Salerno
12 SQUIRE SANDERS & DEMPSEY, LLP
13 Two Renaissance Square
14 40 North Central Ave., Suite 2700
15 Phoenix, AZ 85004-4498
16 *Attorneys for Radical Bunny, L.L.C.*

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18 Matthew K. LaVelle
19 LAVELLE & LAVELLE, PLC
20 2525 East Camelback Rd., Suite 888
21 Phoenix, AZ 85016
22 *Attorneys for Respondents Horizon Partners, T. Hirsch, D. Hirsch, B. Walder, H. Walder, H.*
23 *Shah and M. Shah*